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TO ALL DIPLOMATIC POSTS
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E.O. 12356: N/A
TAGS: MARR PBTS XX

SUBJECT: STATUS OF MILITARY SEALIFT COMMAND VESSELS

REF: STATE 106685 (110517Z MAY 77)

11. REFERENCE (A) SUMMARIZED U.S. GOVERNMENT POLICY AND PRACTICE REGARDING SOVEREIGN IMMUNITY STATUS OF VESSELS EMPLOYED BY THE U.S. NAVY'S MILITARY SEALIFT COMMAND (MSC). RECENT DEVELOPMENTS IN THE DEPARTMENT OF DEFENSE STRATEGIC SEALIFT PROGRAM NECESSITATE A REVISION OF THE POLICIES PROMULGATED IN REFERENCE (A), WHICH IS HEREBY CANCELLED.

12. THE VESSELS OPERATED BY THE MSC ARE THOSE OWNED BY THE USG, INCLUDING THOSE IN THE NATIONAL DEFENSE RESERVE FLEET; THOSE BAREBOAT CHARTERED TO THE USG; AND THOSE TIME OR VOYAGE CHARTERED TO THE USG. SHIPS DESIGNATED UNITED STATES NAVAL SHIPS (USNS) ARE EITHER OWNED BY OR BAREBOAT CHARTERED TO THE US NAVY. MSC BAREBOAT CHARTERED VESSELS ARE PRIVATELY OWNED AND ARE MANNED EITHER BY U.S. GOVERNMENT CIVIL SERVICE CREWS OR BY CONTRACTOR EMPLOYEES. THE PHYSICAL APPEARANCE OF BAREBOAT CHARTERED SHIPS, EITHER BY PAINTING OR BY STACK MARKINGS, IS USUALLY THE SAME AS U.S. GOVERNMENT OWNED USNS. PRIVATELY OWNED AND OPERATED VESSELS CHARTERED BY MSC FOR A PERIOD OF TIME OR FOR A SPECIFIED VOYAGE OR VOYAGES ARE USUALLY MANNED BY CIVILIAN PRIVATE SECTOR CREWS EMPLOYED BY A COMMERCIAL OPERATOR, UNDER THE DIRECTION OF THE UNITED STATES AND USED EXCLUSIVELY TO TRANSPORT U.S. GOVERNMENT NON-COMMERCIAL CARGO. THEY DO NOT, HOWEVER, BEAR DISTINCTIVE U.S. GOVERNMENT MARKINGS.

13. UNDER CUSTOMARY INTERNATIONAL LAW, ALL VESSELS OWNED OR OPERATED BY A STATE AND USED ON GOVERNMENT NON-COMMERCIAL SERVICE ARE ENTITLED TO SOVEREIGN IMMUNITY. THIS MEANS SUCH VESSELS ARE, INTER ALIA, IMMUNE FROM ARREST AND SEARCH, WHETHER IN FOREIGN INTERNAL OR TERRITORIAL WATERS OR ON THE HIGH SEAS; IMMUNE FROM ALL FOREIGN TAXATION; EXEMPT FROM ANY FOREIGN STATE REGULATION REQUIRING FLYING THE FLAG OF SUCH FOREIGN STATE EITHER IN ITS PORTS OR WHILE PASSING THROUGH ITS TERRITORIAL SEA; AND ENTITLED TO EXCLUSIVE CONTROL OVER PERSONS ON BOARD SUCH VESSELS WITH RESPECT TO ACTS PERFORMED ON BOARD. THESE SHIPS, HOWEVER, ARE EXPECTED TO COMPLY VOLUNTARILY WITH THE LAWS OF THE HOST STATE WITH REGARD TO ORDER IN THE PORTS, CASTING ANCHOR, SANITATION AND QUARANTINE, ETC. ALL VESSELS IN THE SERVICE OF MSC, WHETHER USG OWNED, BAREBOAT CHARTERED, TIME OR VOYAGE CHARTERED, ARE IN EXCLUSIVE GOVERNMENT NON-COMMERCIAL SERVICE. EACH OF THESE VESSELS IS ENTITLED TO FULL SOVEREIGN IMMUNITY.

14. IN THE PAST, FULL SOVEREIGN IMMUNITY HAS BEEN CLAIMED (AND HAS GENERALLY BEEN ACCORDED) FOR USNS VESSELS ONLY. AS A MATTER OF POLICY THE USG DID NOT CLAIM FULL SOVEREIGN IMMUNE STATUS FOR TIME AND VOYAGE CHARTERED VESSELS ALTHOUGH AS A JURIDICAL MATTER OUR POSITION HAS BEEN THAT SUCH VESSELS ARE ENTITLED TO FULL IMMUNITY. THIS WAS DONE PRINCIPALLY TO AVOID NUMEROUS REQUESTS FOR DIPLOMATIC CLEARANCE AND TO AVOID CONFUSION BY FOREIGN STATES WHEN THOSE VESSELS ENTERED THEIR PORTS. WITH FEW EXCEPTIONS, IMMUNITIES CLAIMED FOR SUCH VESSELS HAVE BEEN LIMITED TO FREEDOM FROM ARREST AND IMMUNITY FROM TAXATION, AND HAVE BEEN ARRANGED ON A BILATERAL BASIS.

15. FOR THE LAST FEW YEARS, MSC HAS BEEN BRINGING ON LINE THE AFLOAT PREPOSITIONING FORCE (APF), MOST OF WHICH IS TIME CHARTERED. IN THE CASE OF THE APF, THE

POLICY NOTED ABOVE IS NOT SATISFACTORY. APF VESSELS ARE LOADED ENTIRELY WITH COMBAT EQUIPMENT, FUEL AND COMBAT SUPPORT SUPPLIES. THE CONTENTS OF THEIR CARGO IS THEREFORE SENSITIVE AND CANNOT BE MADE AVAILABLE FOR INSPECTION BY FOREIGN AUTHORITIES. APF SHIPS ARE EXPECTED TO CALL ONLY AT A LIMITED NUMBER OF PORTS AND NOT TO MAKE PORT CALLS AS FREQUENTLY AS, E.G., TANKERS OR GENERAL PURPOSE DRY CARGO CARRIERS. IN VIEW OF THE UNIQUE NATURE OF THE AFLOAT PREPOSITIONING FORCE, IT IS THE POLICY OF THE USG THAT ALL AFLOAT PREPOSITIONING FORCE VESSELS, INCLUDING TIME CHARTERED VESSELS, MUST BE AFFORDED THE FULL SOVEREIGN PRIVILEGES AND IMMUNITIES CURRENTLY CLAIMED FOR AND ACCORDED USNS VESSELS. WITH RESPECT TO MSC VOYAGE CHARTERED VESSELS AND MSC TIME CHARTERED VESSELS NOT A PART OF THE AFLOAT PREPOSITIONING FORCE, USG GENERAL POLICY IS TO CONTINUE TO CLAIM IMMUNITY ONLY FROM ARREST AND TAXATION. CIRCUMSTANCES MAY ARISE WHICH NECESSITATE ASSERTIONS OF SOVEREIGN IMMUNITY FOR TIME OR VOYAGE CHARTERED VESSELS IN ADDITION TO THOSE IN THE APF. WHEN SUCH CASES HAVE ARISEN IN THE PAST, SPECIFIC GUIDANCE HAS BEEN PROVIDED AT THE TIME. THIS PROCEDURE WILL CONTINUE.

16. REQUEST ALL POSTS TAKE APPROPRIATE ACTION TO INSURE HOST GOVERNMENTS ARE AWARE, WHEN APPROPRIATE, OF THE STATUS OF SOVEREIGN IMMUNE VESSELS AND ASSIST IN ASSURING RECOGNITION OF THIS STATUS. POSTS SHOULD BE AWARE THAT AFLOAT PREPOSITIONING FORCE TIME CHARTERED MSC SHIPS WILL REQUIRE DIPLOMATIC CLEARANCE FOR PORT CALLS IN FOREIGN COUNTRIES. THE REQUEST FOR DIPLOMATIC CLEARANCE WILL EXPLICITLY IDENTIFY THESE VESSELS AS AFLOAT PREPOSITIONING FORCE SHIPS OF MSC. THEY MAY NOT BE PAINTED DISTINCTIVELY OR BEAR THE MSC LOGO. IT IS ESSENTIAL FOR POSTS TO IMPRESS UPON THEIR HOST GOVERNMENTS THE STATUS OF SUCH SHIPS IN THE EVENT OF PORT CALLS OR OTHER OPERATIONS IN HOST GOVERNMENT TERRITORIAL SEAS AND INTERNAL WATERS. THE LIST OF SHIPS CURRENTLY IN THE APF IS AVAILABLE FROM THE CHIEF OF NAVAL OPERATIONS (OP-42).

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